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In The

Supreme Court of the United States

CALIFORNIA DEMOCRATIC PARTY, CALIFORNIA REPUBLICAN PARTY, LIBERTARIAN PARTY OF CALIFORNIA and PEACE and FREEDOM PARTY, et al.,

Petitioners,

v.

BILL JONES, Secretary of State of California and Californians for an Open Primary, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF AMICUS CURIAE IN SUPPORT OF ALL PETITIONERS SUPPORTING REVERSAL OF NINTH CIRCUIT DECISION

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BRIEF AMICUS CURIAE*

I. INTRODUCTION

The Republican Party of Alaska, Inc.; The Alaska Libertarian Party; The Alaskan Independence Party; Wayne Anthony Ross; Mark Chryson and Linda S. McKay file this brief amicus curiae in support of the petitioners, urging reversal of the judgment of the District Court and the decision of the Court of Appeals for the Ninth Circuit. The counsel for both petitioners and respondents have consented to the filing of this brief amicus curiae. These consents have been mailed to the Clerk of this Court for filing.

The interest of amici in this case is that they are presently being harmed by being unable to choose their own candidates to represent their political parties in Alaska elections. They have had to deal with this situation for many years. The Republican Party of Alaska has been litigating this issue for over a decade, culminating in *Ross v. State of Alaska*, Docket No. 99-927, cert. den. (February 22, 2000). The rights of the amici have been harmed over a period of many years and will continue to be harmed in the future if their right to determine how their candidates are selected is not protected by this Court.

One of the tragedies of the situation in Alaska is that no court has ever allowed the amici to make a factual record as to how the political parties have been harmed and will continue to be harmed. In *O'Callaghan v. State*,

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* Counsel for a party did not author this brief in whole or in part. No person or entity, other than the *Amicus Curiae*, its members, or its counsel made a monetary contribution to the preparation and submission of this brief.

914 P.2d 1250 (Alaska 1996), by a three to one decision, the Supreme Court of Alaska held that Alaska's blanket primary statute is constitutional, and that any interference between Alaska's blanket primary statute and the RPA's rights of free political association is minor and justified by the State's interests. In reaching this decision, the majority opinion placed the burden of proof on the RPA to show a substantial burden to its associational rights. *Heavey v. Chapman,* 611 P.2d 1256 (Wash. 1980). However, notwithstanding the fact that the majority placed the burden of proof on the RPA, the majority did not afford the RPA any opportunity to make a factual record before the trial court.[1]

The amici believe that the parties and other amici in the case at bench will be adequately discussing the law and the effect that depriving the political parties of their right to free political association will have in other states, nationally, and as a matter of general political theory, and will not be discussing these matters in this brief. The principal purpose of this brief is to show, in part, how the political process in Alaska has worked because the political parties have no control over who their candidates are or how they are selected.

II. THERE ARE SIX RECOGNIZED POLITICAL PARTIES IN ALASKA.

There are six political parties in Alaska which will be placing candidates on the 2000 Alaska elections ballots.

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[1] The RPA pointed out to the Supreme Court of Alaska that it was necessary for a remand to develop factual issues if the Court was going to abrogate the RPA's right to free political association. App. 25, n.16.

They are the Republican Party of Alaska (RPA), the Democratic Party of Alaska, the Alaskan Independence Party (AIP), the Green Party of Alaska, the Alaska Libertarian Party and the Republican Moderate Party.

The principal Alaskan political parties, holding the governorship, all Legislative and Congressional seats, and almost all other elective public offices in Alaska, are the Republican and Democratic Parties. As of February 29, 2000, out of a total of 458,759 registered voters, 111,853 are registered as Republicans and 75,863 as Democrats.

The Alaskan Independence Party has been recognized in Alaska since 1984. It presently has 18,773 registered voters. It elected the governor and lieutenant governor of Alaska in 1990, an election which will be discussed later in this brief at page 8.

The Green party of Alaska has been recognized since 1991. It presently has 3,309 registered voters. The Alaska Libertarian Party has been previously recognized, but has not been on the ballot for some time. The Republican Moderate Party is newly recognized, having received 13,540 votes (6.15% of votes cast) in the 1998 general election for governor. Both the Libertarian Party and the Moderate Republican Party will be newly appearing on the 2000 Alaska ballots. The Libertarian Party has 7,001 registered voters and the Republican Moderate Party has 1,254 registered voters.

Alaska is a state where many people do not register as a member of a particular political party. Of the remaining registered voters, 78,510 registered as non-partisan, 157,108 registered as undeclared (may or may not be a

member of a political party, but voter does not wish to declare which one), and 4,937 registered as members of groups not recognized by the State of Alaska.

III. ALASKA LAW ALLOWS PARTIES NO CONTROL OVER THE SELECTION OF THEIR CANDIDATES.

The political parties in Alaska have absolutely no control over how their primary election candidates are selected, who their candidates are going to be, or how the successful candidates are selected to continue to the general election. The Alaska law applicable to the rights and abilities of Alaskan political parties to select their candidates to represent their interests can be summarized as follows:

(1) The parties have no control over who will run as party candidates in their own primary elections. These candidates designate themselves as the party standard-bearers. (AS 15.25.030) A candidate may even change party registration on the same day as filing a declaration of candidacy.[2] The parties must allow these self-designated candidates to run under the party name, and

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[2] In fact, some years ago, Alaska had a candidate running for state office as a candidate of one of the major political parties. This candidate changed his party registration to that of the other major party ten minutes prior to the filing deadline, so that he could run for office as a member of the party that he secretly wanted to represent and that he would have no opponent from the other party. Although extreme, this is typical of the mischief that is sometimes performed under the Alaska method of candidate selection.

cannot get rid of them even if they are totally unacceptable to the party.

(2) The parties have no control over who may vote in their primary elections. (*O'Callaghan v. State*, 914 P.2d 1250 (Alaska 1996, AS 15.25.040 et seq.) In the past, candidates representing political parties in the general elections have been selected by voters of opposing parties through cross-over voting.

(3) The parties cannot even protect the use of their own party names to avoid confusion and misrepresentation. (*Republican Party of Alaska v. Metcalfe*, Case No. 3AN-86-11714 (Sup.Ct., 3rd Jud. Dist., Alaska 1986))

IV. THE STATE-MANDATED SELECTION PROCESS HARMS THE ALASKAN POLITICAL PARTIES.

The harm to the political parties in Alaska is caused by both parts of the process – the self-designation of candidates whom the parties cannot get rid of, and the fact that the parties have to participate in a primary election process in which they have no control over who the voters are going to be. Most of the harm to the parties is caused by a combination of these two limitations. Various types of harm to the parties which have occurred in the past and which will occur again in the future can be easily demonstrated.

(a) Cross-over voting.

A type of harm, which occurs on a regular basis in Alaska, is cross-over voting. This type of harm is principally related to the fact that the parties must participate

in primary elections in which voters of opposing parties may select party candidates. This may take place when a party has only one candidate for a particular office, and the opposing party has two or more candidates. Voters of the party with the single candidate will often vote for the weakest candidate of the opposing party in order to most easily defeat that candidate in the general election. This happens on a regular basis in Alaska, and will continue to happen in the future as long as the right to do so is still in place.

A classic example is the U.S. Senatorial elections of 1974 and 1980. In 1974, Mike Gravel was the only Democratic candidate. The two Republican candidates were C.R. Lewis, a leader of the John Birch Society, and Terry Miller, a moderate. Democratic cross-over voters gave C.R. Lewis the victory in the Republican primary election. As an extreme conservative, Mr. Lewis was unacceptable to most of the electorate. Mike Gravel, the Democrat, then won the general election.

Mike Gravel, the incumbent, and Clark Gruening were the two Democratic candidates in the 1980 United States Senate race. A Republican cross-over vote resulted in Clark Gruening defeating Mike Gravel. The Republican candidate, Frank Murkowski, then won the general election, and presently serves in the United States Senate. In this election, 72,368 persons voted Democratic, while only 27,632 persons voted Republican. There were six Republican candidates in that primary election. Nevertheless, Republicans crossed over into the Democratic primary election in order to defeat the incumbent senator, Mike Gravel.

A comparison of the vote in the 1980 senatorial primary with the vote in the 1978 gubernatorial primary, illustrates the magnitude of cross-over voting:

Primary Election	Republican	Democrat
1978 Gubernatorial	81,632	24,675
1980 U.S. Senate	27,632	72,368

Cross-over voting regularly appears in state races. For example, in the 1984 Alaska primary election for House District 14, Seat A, the only Democratic candidate was James Duncan. Ramona Barnes and Marco Pignalberi were the two Republican candidates. Ramona Barnes, the incumbent, was a senior legislator, and the leader of the Republicans in the Alaska House of Representatives. As such, she was a top Democratic target. In the blanket primary, James Duncan received only 329 votes. Marco Pignalberi defeated Ramona Barnes by a vote of 2816 to 1819. The extremely low number of voters in the Democratic primary election shows a massive Democratic cross-over which defeated the House Republican Leader.

In the 1990 primary election for Senate District F-B, no candidate ran as a Democrat. The Republican candidates were Jan Faiks, former Republican Senate President, and Virginia Collins, a Republican member of the House of Representatives. Jan Faiks, a Republican leader, was a Democratic target. Since the Democrats did not field a candidate, almost all Democrats crossed-over into the Republican primary election, resulting in Jan Faiks' defeat by a 53% to 47% voting margin.

Cross-over voters also affected the election for governor of Alaska in 1978. Democratic voters crossing into the

Republican primary election allowed Jay Hammond, a Republican legislator, to defeat Walter J. Hickel, former Secretary of the United States Department of the Interior and former Governor of Alaska. In the 1978 gubernatorial primary election, 24,675 individuals voted for Democrats and 81,632 persons voted for Republicans. Again, the low number of voters in the Democratic primary shows massive cross-over of Democrats into the Republican primary election.

The foregoing are examples only, and do not represent all of the instances of cross-over voting. The common practice of voting for the weakest candidate in your opponent's party does not promote good government, and needs to be stopped in Alaska.

(b) 1990 and 1998 Alaska Gubernatorial Elections.

The 1990 and 1998 Alaska Gubernatorial elections demonstrate the extremes of harm which can take place to a party if they have no right to designate how their candidates are selected. As a result of the selection process mandated by the State of Alaska, the Republicans were harmed so badly that Alaska has had an AIP governor for four years, followed by a Democrat governor for eight years, in a state in which the vast majority of voters are Republicans or conservative independents.

(1) 1990 Gubernatorial Election

The 1990 Alaska gubernatorial election was extremely interesting, and a disaster for the Republicans. As a result of the state-mandated candidate self-selection

and primary process, Arliss Sturgulewski was selected as the Republican candidate for governor and Jack Coghill selected as Republican candidate for lieutenant governor. The Alaskan Independence Party candidates were John Lindauer for governor and Jerry Ward for lieutenant governor. Ms. Sturgulewski was unacceptable to most Republicans, and Ms. Sturgulewski and Mr. Coghill were unacceptable to one another. This fact became obvious almost immediately.

Mr. Coghill, Walter J. Hickel (former governor of Alaska and former U.S. Secretary of the Interior), and the Alaskan Independence Party entered into an agreement whereby Mr. Lindauer and Mr. Ward removed themselves from the ballot, and Mr. Hickel and Mr. Coghill ran for governor and lieutenant governor as candidates of the AIP. A large Republican cross-over to AIP in the 1990 general election resulted in Mr. Hickel and Mr. Coghill, AIP candidates, being elected governor and lieutenant governor of Alaska.

In this election, the state-mandated selection process resulted in a major candidate, unacceptable to most of the Republicans themselves, to be the Republican party standard-bearer. In order to protect themselves from that, Republicans had to purposely harm themselves in order to avoid the unacceptability of their own candidate. The harm itself turned out to be more serious than anticipated. Not only did Republicans lose certain appointments and positions, such as membership on the Alaska Public Offices Commission, which go to members of the governor's party, Mr. Coghill's election gave him a position from which to run for governor in 1994. Mr. Coghill's run for governor in 1994 fractured the Republican and

conservative vote, resulting in the election of Tony Knowles, a Democrat, as governor of Alaska – a state in which the vast majority of voters are Republicans or conservative independents.[3]

(2) 1998 Gubernatorial Election.

The 1990 gubernatorial election was tragic for the Republicans. The 1998 gubernatorial election was much worse.

In 1998, John Lindauer came to Alaska with millions of dollars in Chicago money to buy the governorship. This is the same John Lindauer who ran for governor as an AIP in 1990. This time, he decided to run for governor as a Republican.

The major candidates in the Republicans gubernatorial primary election were John Lindauer, Robin Taylor, and Wayne Ross. Mr. Taylor and Mr. Ross were conservative Republicans who had been active in the Republican Party for many years. Mr. Taylor is a State Senator and Mr. Ross was a member of the Republican National Committee. Mr. Lindauer had access to out-of-state money and was able to spend millions of dollars to become governor. Mr. Ross and Mr. Taylor had difficulty

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[3] In Alaska, very close elections are common. Accordingly, allowing voters of opposing parties to vote in a party's primary election grants these voters an unusually great power to affect the outcome. For this reason, the right of a party to exclude members of other parties from voting in the party primary election is more important than it may first appear.

raising money because of the Alaskan Campaign Finance Act, and could not compete financially with Mr. Lindauer. In addition, Mr. Ross and Mr. Taylor split the conservative Republican vote. Mr. Lindauer was selected as the Republican candidate. He would have lost to either Mr. Ross or Mr. Taylor had only one of them been running.

In this Republican primary election, a classic cross-over voting situation existed. The Democrats had one strong candidate, Tony Knowles for reelection, running in the Democrat gubernatorial primary election. His victory was certain. Mr. Lindauer was known to be the Republican candidate whom the Democrats could defeat most easily. Cross-over voting took place in the Republican primary, which assisted in the victory of Mr. Lindauer, although it cannot be said that this was the only reason that Mr. Lindauer won the Republican gubernatorial primary. His unlimited money was another major reason.

Once Mr. Lindauer won the Republican primary, his candidacy began to disintegrate almost immediately over questions relating to his residence, the source of his money, his integrity, and his continued lying. Chuck Achberger, a former employee of the Lindauer campaign, filed a complaint with the Alaska Public Offices Commission, over Mr. Lindauer's finances and his required reporting. An independent voter, Frances Grady, filed a lawsuit in the Alaska Superior Court, dealing with the same issues. (*Grady v. State*, Case No. 3AN 98-9720 CI) Both these complaints requested that Mr. Lindauer's name be removed from the general election ballot. Neither the Alaska Public Offices Commission or the court

resolved the proceedings before them prior to the 1998 general election.

The disintegration of the Lindauer campaign affected not only his campaign, but also the campaigns of Republican candidates across the board. It also affected the credibility and integrity of the Republican Party itself. Fewer than two weeks prior to the general election, after some weeks of the only issue being "Lindauer", the Republican Party accepted the fact that it had to write-off any chance to elect a Republican governor in 1998. The RPA had to disavow Mr. Lindauer in order to save the party from a massive defeat across the entire spectrum of elective offices. The RPA withdrew its endorsement from Mr. Lindauer and recommended that voters write-in Mr. Taylor for governor. Mr. Taylor, who received the second-highest number of votes in the Republican gubernatorial primary, was the logical selection.

The Republican Party of Alaska had never before been forced to withdraw an endorsement of one of its gubernatorial candidates in a general election. In 1990, the rejection of Ms. Sturgulewski was by the Republican voters themselves. The 1998 rejection of Mr. Lindauer had to be done by the Party in order to preserve its own integrity and protect its legislative races, which were in serious danger if the RPA continued to support Mr. Lindauer. This in fact was done at great personal risk to party officers. Immediately after rejecting Mr. Lindauer, the party officers, Mr. Taylor, and the son of Mr. Achberger (who filed the first APOC complaint) who worked for the RPA as office manager, and others, were sued personally for multi-millions of dollars for "conspiracy to destroy Republican nominee's for Governor election on November 3, 1998" (*Lindauer v. McKay, et al.*, Case

No. 3AN 98-10195 (Sup.Ct., 3rd Jud. Dist., Alaska 1998)) and threatened with criminal prosecution. Not only could the RPA not get rid of a totally unacceptable candidate for governor, it was claimed that its officers were personally civilly and criminally liable for trying to do so.

The RPA objected and continues to object to a statutorily-mandated election process which forces it to accept a candidate such as Mr. Lindauer as its standard-bearer in the general election.[4]

The 1990 gubernatorial election also harmed the Alaskan Independence Party. A blanket primary is, in fact, most destructive to the minor parties. These parties have relatively small numbers of registered voters. The massive numbers of voters of other persuasions, should they vote for a minority party candidate, can simply overwhelm the minor party, and easily deny those parties' members the rights to choose their own nominees. The winner of the 1990 AIP primary election for governor was Sylvia Sullivan. Ms. Sullivan was a Democrat, who

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[4] After the 1998 general election, the Alaska Public Offices Commission, in ruling on the Achberger complaint, found numerous campaign law violations and referred the Lindauer matter to the Attorney General's office to consider criminal prosecution. In August, 1999, the Attorney General of Alaska filed a complaint charging Mr. Lindauer with twenty-three (23) violations of law which occurred during his campaign, including twenty-two (22) Class A misdemeanors and one felony. *State v. Lindauer*, Case No. 3AN 99-7041 CR. Mr. Lindauer subsequently pleaded guilty to several charges and was sentenced to fines and community service. He agreed not to seek public office in Alaska again and published an apology in Alaskan newspapers.

changed her party registration to AIP solely for the purpose of running for governor as an AIP candidate. She would not subscribe to the platform and beliefs of the AIP, and would not even attend AIP meetings. The AIP objected to Ms. Sullivan as its candidate, refused to endorse her, and actually endorsed the Republican candidate, John Lindauer. The AIP supported a write-in candidate, Nick Begich, in order to get its principles before the public from a stance of credibility. Voters of other political parties assisted in the victory of a Democrat in the AIP gubernatorial primary. The AIP objected, and continues to object, to the blanket primary election system which selected Ms. Sullivan, a Democrat, as its gubernatorial candidate.

To summarize this election, a state-mandated selection process resulted in gubernatorial candidates of the RPA and the AIP which were *totally* unacceptable to those parties. The parties could not get rid of them, as unacceptable as they were, but were forced to accept them as the party standard bearers on the general election ballot. The AIP rejected its candidate to endorse the Republican, and also supported a write-in candidate. The RPA rejected its candidate to support a write-in candidate. Both parties knew that by doing so, they would lose any chance at the governorship. But the state-mandated selection process, to which both parties objected, saddled them with candidates where the alternative of throwing away the possibility of electing a governor was preferable to supporting the candidates foisted on them by the state. This does not protect the right of free political association in any way!

V. THE REPUBLICAN LEGISLATORS WILL NOT ASSIST THE RPA ON ISSUES CRUCIAL TO THE PARTY.

In the Legislature presently in session, of the 20 Senate members, 15 are Republicans and 5 are Democrats. Of the 40 House members, 27 are Republicans and 13 are Democrats. This constitutes a majority sufficient to override even a veto of a bill by the governor.

One of the purposes of the right of political association is to elect representatives to further the principles and obtain the goals sought by the members of the political party. This brief will not discuss Legislative treatment of the principles of the Republican Party, or even the political goals that the Party desires to obtain, but simply the issues which are critical to the basic survival and strengthening of the Party itself. One would think that with a veto-proof majority of legislators who call themselves Republicans, the Party itself could obtain necessary protection in order to minimally allow the Party to effectively function.

Think again! The candidate self-designation and primary election process mandated by the State has resulted in a Legislature that specifically tries to weaken, rather than strengthen, the Republican Party itself, without reference even to whether it supports the Republican Party platform and principles. The following are some clear examples.

(1) **Party Name**. For many years, the RPA has been aware of the threat posed by the Republican Moderate Party, and has requested that the Legislature protect the Party by enacting a statute such as Del. Code Ann. tit. 15,

§ 3202 (1999), which protects the rights of the Democratic and Republican parties to the exclusive use of these names to protect the parties against misleading use of the names by other groups. The Legislature has continuously refused to do so. This refusal will come home to roost later in 2000, now that the Republican Moderate Party will appear on the ballot.

The avowed and published goal of the Republican Moderate Party is to deny each of the other parties a majority in the Legislature, and force the formation of a coalition of all parties run by the Moderates. It may only take a few seats to do this. Such a result substantially harms the true Republican Party.

This will bring back the "coalition" problem, which the RPA actually managed to get rid of in 1992. Historically, Republican legislators abandoned their Republican colleagues by joining leadership coalitions dominated by Democrats. In the 1990 election, enough Republicans were elected to form a Republican majority in the Alaska Senate. However, certain Republicans desired benefits for themselves, which they might not have received from the Republican majority. Accordingly, three Republican legislators abandoned their Republican colleagues and entered into a coalition dominated by Democrats in order to obtain leadership roles for themselves.

The 1992 primary election was conducted in accord with Republican Party rules and not state law. As a result, none of the three 1990 defectors were re-nominated as Republicans. Democrats could not reward the Republican

defectors with votes in the Republican primary. Republican voters elected other candidates, and there has not been a defection since. In fact, largely because of the discipline imposed by the primary rule, Republican legislators have been in the majority in both the Alaska House and Senate since the rule was implemented. There has not been a "coalition" problem subsequently because the number of legislators self-designated as Republicans has increased substantially, but the Party does not want these coalitions to return.

The Legislature, however, will not enact a statute protecting the Republican Party in the exclusive use of its name.

(2) Party Control of Candidate Selection Process. Ever since 1990, the RPA has requested the enactment of a statute either (a) authorizing a Republican primary election from which registered voters of other political parties (the enemy) were excluded, or (b) stating that each political party had the right to determine how its candidates were to be selected. The Legislature has continuously refused to recognize the parties' preferences, instead forcing all parties into a candidate self-designation, blanket open primary system, a system unacceptable at least in part to almost all the political parties in Alaska.

Such a system weakens the political parties, while strengthening the individual candidates. In particular, candidates do not have to be responsible to anyone in order to get on the ballot or be elected. They are responsible to no one for their behavior after election. It is easy to understand why the political parties want to determine

how their candidates are selected, and why the candidates do not want them to do so.

(3) Instant Run-Off Voting (IRV). The Number One Legislative Priority for the Republican Party during the 1999-2000 legislative session is instant run-off voting, also sometimes called preferential voting. This is also a priority of some of the other political parties. Basically, the process allows a voter to rank candidates for any particular office at first, second, third choices, etc. If any candidate receives a majority of first choices, that candidate is elected. If there is no majority, the candidate receiving the fewest first choice votes is eliminated, and votes cast for that candidate are transferred to the next ranking candidate listed on each of these ballots. This process continues until one candidate receives a majority.

This process creates a majority, without the expense of a run-off election. It does not allow a candidate unacceptable to most of the voters to be elected. It strengthens the minor parties in that their voters may vote their true beliefs, without their votes being wasted. It eliminates the problem of multiple candidates splitting the vote and throwing the election to more unpopular candidates.

The Republican Party needs this process enacted by legislation for two reasons. First, the RPA anticipates that their will be a substantial split of the conservative and independent votes in the 2000 election between the Republicans, the AIPs, the Libertarians and the Republican Moderates. This will result in Democrats being elected. Second, the system requires a constitutional amendment to be applied to the office of governor, and a

constitutional amendment must be initiated by the Legislature. The parties feel so strongly about this system that an initiative petition, sponsored by a Republican District Chairman, the chairman of the Alaskan Independence Party, and a former Chairman of the Green Party of Alaska, is presently being circulated to implement this system for offices other than governor.

Can we all get this necessary reform from the Legislature this session? – perhaps, but probably not. Certain legislators are looking at the way they believe this reform will affect their own reelections, and not how the parties as a whole will benefit. This again results from the state-mandated method by which these legislators were selected. They won under the old way – there is no reason to change.

(4) Campaign Finance. The Alaska Campaign Finance Act creates serious problems for the political parties and certain individuals, including the writer of this brief. These problems are unrelated to monetary contributions for the direct benefit of candidates, which this Court recently held were subject to state regulation, but deal with contributions of personal services to parties and payments which are not related to candidates.

The Alaska Campaign Finance Act limits contributions made "for the purpose of influencing the nomination or election of a candidate". It also limits professional services for which the donor would ordinarily be paid. (AS 15.13.400(3)) The Alaska Public Offices Commission has held that, since the purpose of a political party is to elect candidates, all contributions made to a political party are, as a matter of law, for the purpose of electing

candidates. This has led to such results as the membership chairman of the Alaska Libertarian Party being in violation of the law by voluntarily preparing and distributing his party newsletter, and the attorney Republican National Committeeman being in violation of the law because he took his legal assistants to a Republican Women's lunch where a C.L.E. program was being presented on how to comply with the Alaska Campaign Finance Act. I am the legal counsel of the Republican Party, and donate my legal services to the Party as part of the duties of that Party office. This has resulted in my regularly committing criminal acts, such as (1) paying for lunch at a Party Committee meeting, (2) replacing a flag that had been stolen from the front of the Party headquarters, and (3) the preparation of this amicus brief. The parties themselves, as recipients of these benefits, are also in violation of law. These issues are presently before the U.S. District Court for the District of Alaska in *Jacobus v. State*, DC# CV 97-272 (JKS). But they should not have to be before a court.

I had originally thought that what I believed were unintended consequences of the Campaign Finance Act would be cleared up quickly by the Legislature, particularly since one of their own forgot to file a required disclosure report which put her right to hold office in jeopardy, and they solved that problem in a matter of days by amending the applicable statute. Also, this Act clearly infringes upon clearly protected rights of parties and individuals who help the parties, without reference to candidates, and it is necessary that these problems be resolved. Finally, the limitations placed on the Party by

the Act in its present form make it extremely difficult for the RPA to even pay its rent, utilities, etc. and survive.

Resolving these Campaign Finance Act issues is the Number Two Legislative Priority of the Republican Party. The Party and I have tried for years to obtain Legislative relief. None is forthcoming. The Republican Party and I are now starting our fourth year as career criminals, and the RPA is starting its fourth year broke. The other parties and other individuals must have similar problems.

In summary, there obviously is a problem in the selection process if the state-mandated selection process results in a Legislature, with a veto-proof Republican majority, which will not decriminalize personal services rendered to the Party it is supposed to represent, and the Party is allowed to continue to exist as an indigent criminal association.

CONCLUSION

This Court has repeatedly held that one of the basic rights of free political association is the right to nominate candidates of the party's choice. *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986) involved the selection of Republican candidates to run in the general election. The State of Connecticut wanted to keep the candidate selection process closed, while the party wanted to allow certain non-party members to vote. *Democratic Party of the United States v. Wisconsin, ex rel. LaFollette*, 450 U.S. 107 (1981) involved the delegate selection process of a national party for national conventions.

The State of Wisconsin wanted to keep the delegate selection process open, while the party wanted to close the process to outsiders. In both *Tashjian* and *LaFollette*, this Court held that the parties' desires prevailed over the states' interest in opening or closing the candidate or delegate selection process. In *LaFollette*, 450 U.S. at 124, n.27, this Court specifically stated:

> It is for the National Party – and not for the Wisconsin Legislature or any court – to determine the appropriate standards for participation in the party's candidate selection process.

Most recently, in *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997), this Court reaffirmed *Tashjian*, stressing that "[t]he New Party's claim that it has a right to select its own candidate is uncontroversial, so far as it goes. . . . That is, the New Party, and not someone else, has the right to select the New Party's 'standard bearer' "

The amici recognize that a different candidate selection method is appropriate for different types of parties. A new small party, such as the Libertarians or Republican Moderates, may need to use a candidate selection process which is different from the process used by the Republicans or Democrats. A blanket open primary election where the candidates designate themselves is simply not a size which fits all, and in fact is probably a size which fits no one. The parties themselves should be allowed to decide, however.

I have been authorized to state that the Republican Moderate Party desires to have at least a review and veto power over its candidates. It wants to be sure that the

candidates running under the name of Republican Moderate are honest, and truly represent the principles of that party. A former chairman of the Green Party is a strong supporter of instant run-off voting, and a sponsor of the petition. I cannot speak for the Democrats. It is clear, however, that the present state-mandated system is not working, is not acceptable, and is clearly harming the political parties in Alaska.

The amici request that this Court rule, in accord with its prior decisions, that the parties themselves have the right to determine how their candidates are to be selected, whether by primary election, by party convention, or by some other manner. The right to free political association, at a minimum demands this.

Respectfully submitted,

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